

REMARKS

A. The Amendments

Following entry of this Amendment, claims 42-61 are pending in this application. Claims 42-61 have been amended so that the preamble more broadly refers to a "composition" rather than a "peptide" to make the claims more definite, and to correct typographical errors. No new matter has been added.

Applicants submit that the application is in condition for immediate allowance.

B. 35 U.S.C. §112, second paragraph

Claims 43-51, 56, 57-61 were rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. Applicants respectfully submit the rejections have been rendered moot with entry of this Amendment and that a skilled artisan would be reasonably apprised of the metes and bounds by the subject claims. For example, a skilled artisan would appreciate the term "for use as a vaccine" and would know whether a given composition would fall within its ambit. Also, the term "homologous" would be understood by a skilled artisan in view of the disclosure of the subject application and the term is sufficiently clear. Applicants respectfully submit that the term "about" in a claim has been accepted under pertinent precedent and does not render the claim indefinite.

Applicants respectfully request withdrawal of this rejection.

C. 35 U.S.C. §112, first paragraph

Claims 44-61 were rejected under 35 U.S.C. § 112, first paragraph, for allegedly being non-enabled. Applicants respectfully traverse the rejection. The Examiner alleges that a skilled artisan would only be enabled to use certain peptides in a vaccine but the Examiner has not presented any support that a skilled artisan would not be enabled to practice the subject invention in a scope that is commensurate. The Examiner appears to allege that clinical effectiveness to prevent infection is not shown. Applicants respectfully submit that the issue raised by the Examiner assumes that preventing infection is the sole benefit. Applicants respectfully disagree and even the

reference cited by the Examiner (Aggarwal et al., 2000) states that vaccines have a range of benefits, for example, alleviating the course of infection. Aggarwal, at 16. Also, the issue of clinical effectiveness is more properly addressed under the jurisdiction of the FDA. The Examiner has not shown that a skilled artisan would not be enabled to use the subject compositions in a vaccine.

Applicants therefore respectfully request withdrawal of this rejection.

D. Provisional Obviousness-Type Double Patenting

Claims 42-61 were provisionally rejected for obviousness-type double patenting. Applicants submit that once allowable subject matter is indicated, Applicants will file any necessary terminal disclaimer.

E. Conclusion

Applicants respectfully submit that pending claims 42-61 are in condition for immediate allowance. The undersigned invites the Examiner to call (650) 838-4382 with any questions or comments. The Commissioner is hereby authorized and requested to charge any deficiency in fees herein to Deposit Account No. 50-2207.

Date: December 14, 2004

Respectfully submitted,
Perkins Coie LLP



Norbert Stahl
Registration No. 44,350

Correspondence Address:

Customer No. 22918
Perkins Coie LLP
P.O. Box 2168
Menlo Park, California 94026
(650) 838-4300